



MUNICIPAL COURT Judges Bulletin

Spring 2007 • The Georgia Council of Municipal Court Judges Newsletter • Vol. 8, No. 2

TABLE OF CONTENTS

Executive Committee.	2
Next Meeting Dates	3
Minutes of Spring Meeting	4
Financial Report	9
Benchbook	9
Traffic Update Seminar	10
Council Elections.	11
Brown v State	12
Caselaw Update	13
Legislative Update.	14
Echols v Echols	15
Three Cheers for Lawyers . .	16
Red Light Photo Mania	18
Running (from) the Numbers	21
May 2007 Jail Report	23
We Need Your Numbers	24

President's Corner

Michael P. Cielinski
Recorder's Court of
Columbus-Muscogee County

As this is my last letter as president, I want more than anything for you to know how honored and privileged I am to have served the Council of Municipal Court Judges. Looking back, the year has been one of mountain top highs and valley lows. We have run the gamut of human experiences with periods of mourning and rejoicing, apathy and commitment, struggle and triumph. In the end we managed through the tumultuous times, hung in there until successes were experienced and learned much about our character along the way. This past year has truly been a success!!

The year started under adverse conditions. We grieved the lost of our brother and beloved friend, Judge David Pierce. For those not fortunate enough to have known Judge Pierce let me just say he was a man of outstanding character and very dedicated to the council. Most people were unaware that he, despite great pain, opted to postpone a hospital visit to attend last year's annual traffic seminar. Shortly thereafter he was diagnosed with terminal cancer and was gone the following month. The Council was dealt another blow with the

unexpected resignation of Ms. Marla Moore, Administrative Office of the Courts. A 26-year veteran of the AOC, Marla was instrumental in the council's development through the years. Lastly, we were effectively paralyzed due to lack of a quorum at the fall and winter quarterly meetings. During this time no official business could be conducted. By all accounts the Council had hit a monumental low.

Thankfully we were able to galvanize ourselves around several key initiatives and produce notable results. The Council held its eighth annual legislative breakfast, which, despite inclement weather, was attended by a number of legislators. The IT Committee made significant progress in the development and implementation of our technology strategic plan. Survey results from more than 160 municipal courts have yielded invaluable information on our existing technology needs. We will continue pursuit of our goal to integrate municipal courts across the state and improve our overall technology capabilities. Our Training Council worked in tandem with the Municipal Clerks' Advisory Committee to frame the municipal court clerks' training certification program. Last month, a group of us convened in Macon to

continued on page 3

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President's Corner *cont.*

develop a strategic plan for the council. Once finalized, the plan will establish a foundation and set direction towards reaching our long-term goals. Also, several judges responded to the call of service and our Nominations, Uniform Rules, and Bylaws committees really took flight. Time and talent was devoted to ensure a slate of candidates was prepared for next month's elections, a finalized draft of our uniform rules was arranged, and a proposed bylaw amendment which expedites the filling of officer vacancies (unexpired terms) was made ready. As a Council we will vote on these matters at next month's annual meeting in Savannah. We anticipate a tremendous turnout and are hopeful that business meeting attendance will be yet another sign of a resurgent council. I encourage each of you to make a special effort to attend as this year's keynote address will be

NEXT MEETING DATES

Municipal Court Training Council: **June 27th**, 1:00 p.m., Hyatt Regency Riverfront, Savannah

Executive Committee Meeting: **June 27th**, 3:00 p.m., Hyatt Regency Riverfront, Savannah

CMCJ Business Meeting and Election of Officers: **June 28th**, 1:00 p.m., Hyatt Regency Riverfront, Savannah

delivered by Chief Justice Leah Ward Sears.

I am confident you are aware that we, after a decade long struggle, are now members of the Judicial Council. By order of the Supreme Court of Georgia, signed May 2, 2007, the Council of Municipal Court Judges has obtained non-voting, ex officio representation on the Judicial Council. While this falls short of our longstanding goal of full membership, it is what I believe to be an affirmative step in that direction.

Many people were responsible for the various accomplishments during the past year. I want to extend my sincere gratitude to those members of the Executive Committee, Training Council, various committee chairs and individual judges who responded when the Council was most in need. Through our collective efforts over the past months we have made a difference and impacted our future beyond imagination. I am also appreciative to

the members of the Supreme Court of Georgia for their demonstrated wisdom in giving voice to the voiceless. I would especially like to recognize and extend a very special thanks to Chief Justice Sears and Justice Hines for their leadership and courage. Finally, I wish to express my heartfelt appreciation to ICJE and AOC staff for the countless hours spent in service to our Council - may you never wonder if you are appreciated or question your value.

This has been a challenging year for the Council and for me personally. But I am energized by the exciting work that is going on and have reason to be optimistic about the future. We have many more challenges and opportunities ahead, and I look forward with great eagerness to tackling them with the incredible people which make up our council. Thanks again for the opportunity to serve. See you in Savannah!!

Uniform Rules for Municipal Courts Your Assistance is Needed!!

By Judge Willie C. Weaver, Sr.

The Uniform Rules for Municipal Courts are in the final stages of completion, but I would really appreciate some assistance on this project. There are so many facets to our level of court that as many of you as possible should review and comment. The Executive

Committee hopes to vote on a final product at the Business Meeting on June 28th in Savannah.

Please contact me as soon as possible if you can assist. Judge Willie C. Weaver, 229-438-9455 or wweaverlaw@MCHSI.com

Minutes of the Fall Meeting

February 1, 2007 • Sloppy Floyd Building, Atlanta

The meeting was called to order by President Cielinski at 9:30 a.m. He thanked everyone for attending the meeting despite the inclement weather, and noted that Judge Gerhardt had agreed to participate by phone. Judge Cielinski commented that for the second meeting in a row, a quorum was not present. He then asked that members and guests introduce themselves.

Minutes of Previous Meetings

Judge Cielinski inquired if there were any additions or corrections to the minutes from the meetings held on June 28, 2006 and on October 13, 2006. Judge Ward asked that the Treasurer's Report from October minutes be amended to reflect that flowers were sent "in memory of" rather than "in honor of" Judge Pierce. There was no further discussion.

Financial Reports

Mr. Patterson reported the total FY 07 State-funds appropriated were \$19,534.00. As of December 31, 2006, \$8,843.91 in expenditures had been processed, with a remaining balance of \$10,690. There were no questions.

Judge Gravitt provided the report on Association funds. During the first quarter of FY 07 a total of \$7,320.00 in dues were deposited; an additional \$200.00 in vendor fees was received. Expenditures during this period - office supplies, flowers for Judge Pierce, and the Judicial Council reception at the Wyndham Hotel - totaled \$656.61. A sum total of \$2070.00 in deposits was

processed during the second quarter, with \$560.00 expended in the period. The overall balance for Association funds stand at \$57,411.69. This amount reconciles with the year-end bank statement.

Judge Leibel asked the Executive Committee to consider incorporating the \$30 annual dues notice into the application for continuing education seminars. It was suggested that city governments would be more willing to pay with one check rather than two. Judge Cielinski noted some municipalities are paying dues, others are paying only for the training, and some are paying for both. Judge Bobbitt inquired if judges sitting in multiple courts paid more than one fee. Judge Ward stated that it has always been Council policy to charge only one \$30 fee per judge. Staff was asked to investigate and report the feasibility of ICJE collecting dues separate of the registration fee - an arrangement similar to the State Bar Continuing Education fees. Judge Ward also asked that the dues be assessed by calendar year rather than fiscal year to accommodate the city financial officers.

Report from AOC

Mr. Chris Patterson reported several staff changes had occurred since the last meeting. He introduced Ms. Yolanda Lewis as the new Assistant Director for Judicial Liaison, and Ms. Leslie Johnson, as dedicated staff to assist the Council of Municipal Court Judges. He noted while Ms. Murphy would continue to provide administrative support to the

Council, her duties and responsibilities would gradually shift to other areas. Mr. Patterson then introduced other AOC employees in the audience, including Mr. Laurence Lewis, Legislative Intern with the Governmental Affairs Division. Following this, he called upon Ms. Lewis, Ms. Martin, and Mr. Basto to address the Council.

Judicial Liaison: Ms. Lewis stated she was looking forward to working with the municipal judges in a more direct role. She stressed the necessity of increased caseload reporting among municipal courts. Of the existing 400-plus municipal courts operating in 2005 only 83 reported caseload information to the AOC. Nevertheless, reports received from the 83 courts represented over 800,000 case filings. She noted the reporting period begins on July 5th. Court Services staff would assist the Research Division with increasing caseload reporting among municipal courts. Ms. Lewis also distributed a recently developed informational brochure on the Council of Municipal Court Judges. She asked judges to forward ideas to make the resource more useful.

Grant Initiatives: Ms. Jane Martin, Assistant Director for Grants and Performance Outcomes, reported the Grants Management Section seeks new funding sources for special projects in the courts. Grants Management is able to assist the Municipal Court Judges Council with the grant application process,

continued on page 5

Minutes cont.

and will provide technical assistance to judges for local projects. She passed out several handouts on the grant application process and announced that the State Justice Institute has grant money available for out-of-state education. Ms. Martin also discussed various requirements for use of grant funds, and gave examples of possible court projects. Judge Whatley asked if a teenage driver safety course would be a good project. Ms. Martin responded that it would. Judge Jackson added that Safe America (Marietta, Georgia) is a funding source used by the Atlanta Municipal Court to implement teen driving programs.

AOC IT Initiatives: Mr. Jorge Basto, Assistant Director for Technology, addressed the Council on several technology resources available to the courts from the AOC:

Traffic Information Processing System (TIPS): The TIPS software is available at no cost. It offers web-based data entry and safe storage, automatic calculation of fees and fines, and many other amenities. The TIPS program is currently being updated to download data from other caseload management systems.

Business Continuity Planning: Mr. Basto discussed the importance of each court having a Business Continuity Plan so that it can quickly and efficiently recover from any disaster that disrupts court business. Courts utilizing AOC servers to store caseload data have the advantage of instantaneous backup, nightly copies to secondary servers, and weekly backups to a co-location in another

city. Mr. Basto also discussed Disaster Recovery Planning to develop the process for recovering lost data. He noted at least six courts had experienced some type of disaster in the past year and were struggling to recover lost data due to lack of pre-planning. AOC offers assistance to courts who wish to develop either plan type.

Online Meetings: Mr. Basto informed the Council of the available technology for conducting virtual meetings. He explained GoToMeeting and WebX enable participants to attend meetings via computer, effectively reducing cost and time associated with travel. These services are particularly useful for committees working on shared documents and projects.

Other Services: Mr. Basto also reminded the members that the AOC IT Division can assist the judiciary in areas such as caseload management, survey services, listservs, discussion forums, web site services and hosting. He encouraged feedback and questions about any of the above topics.

Court Technology Conference (CTC10): In closing, Mr. Basto encouraged judges to attend the Court Technology Conference in Tampa, Florida, in October. Judges and court administrators at all levels can benefit from the seminars, networking, and the opportunity to question vendors about numerous court technology products.

Municipal Court Judges Training Council

Judge Bobbitt, reporting for Judge Still, stated the Training

Council met with the Clerks' Advisory Committee and ICJE staff to discuss municipal clerks' training and certification. Although multiple training sites were proposed, ICJE is able to staff the multitude of events due to insufficient funding and personnel at this time. The Training Council has adopted as priority the training of chief clerks during 2007. Deputy clerks would be incorporated into the trainings on a space-available basis. The clerk certification program will be fee driven.

Judge Cielinski informed the leadership of the Georgia Municipal Court Clerks Council (GMCCC) had changed from Mr. Pat Flynn, City of Thunderbolt, to Ms. Laura Oles of Peachtree City. Mr. Flynn is no longer employed as a municipal court clerk and therefore ineligible to hold office or remain a member.

Judge Whatley asked the Training Council consider a change in policy to allow training credit to carryover into the next year. He felt judges, especially those who regularly attend out-of-state programs, were penalized by the annual hour, in-state requirements. Judge Cielinski noted that the Training Council allows some latitude on a case-by-case basis. Judge Bobbitt added the Training Council has a goal to encourage judges to attend in-state training every other year.

According to Judge Leibel, entities such as the Brain and Spinal Injury Trust Fund are reporting information about their work to courts and judges in response to increased legislative interest in the fee and fine process. Representatives from the Brain and Spinal Injury Trust Fund

continued on page 6

Minutes cont.

have asked to be invited to attend future training seminars. Judge Bobbitt stated he would convey the request to the Training Council and ICJE, and added that there may be an opportunity at the Athens seminar.

Committee Reports

Benchbook: Judge Ashman directed members' attention to his written report behind Tab 3 in the agenda. He thanked the judges who assisted in the update to the Municipal Benchbook, and asked for copies of forms that judges have found useful in their courts for inclusion. He stated he would contact Mr. Reaves about updates to five chapters of the Magistrates Benchbook included in the Municipal Benchbook. He solicited ideas as to how the benchbook might be improved upon. Judge Ward expressed his appreciation for the work of Judge Ashman and his committee.

Budget: Judge Gravitt reported that he would like an updated roster of all municipal court judges in order to determine which judges should be paying dues.

Legislative: Judge Barrett encouraged all judges to use the AOC website (www.georgiacourts.org) to link to House and Senate bills of interest to the judiciary. He called attention to several specific bills up for consideration:

HB 5: Proposes a one point penalty on the driving record of any person convicted of driving while distracted (ex: using a cell phone).

HB 4: Prohibits the use of cell phones by persons with instructional

permits.

HB 77: Proposes to repeal the use of red light cameras as an automated traffic enforcement tool.

SB 18: Proposes an additional filing fee for civil cases filed in Municipal Court to fund alternative dispute resolution programs. Judge Bobbitt stated that GMA is also monitoring this bill.

SB 15: Seeks to make the third conviction of driving with a suspended, disqualified, or revoked license a felony with a \$2500.00 minimum fine. Committee members discussed whether such penalties would qualify as a predicate offense for "Habitual Violator."

SB 23: Allows courts to inquire and consider a defendant's legal immigration status when considering probation and suspension of sentences. This also includes probation for misdemeanor and ordinance violation cases. The bill specifies how courts may utilize this information.

HB 114: Mandates utilization of safety belts in pickup trucks. There are no fine increases or add-ons associated with this bill.

HB 79: Provides for exemptions to the window tinting provisions, limits the fine to \$15.00, and does not allow add-on fees.

Judge Ashman inquired about increased fines for speeding above a certain limit and was informed the proposed bill had not dropped. Judge Cielinski noted Ms. Nesbit does an outstanding job of monitoring bills of judicial interest and notifying the judges of matters requiring

immediate input.

Judge Whatley noted judges are experiencing problems with sheriffs reducing the good time behavior sentence. He felt judges have already taken into account the "good time" statute when sentencing offenders. He also said there is case law to ensure judges do not impose full-time sentences without evidence of 'institutional misbehavior.' Discussion was held regarding options to ensure sentencing decision remain at the judges' discretion. Judge Barrett and Judge Whatley both were in favor of legislation to make the authority more clear.

Liaison with Other Agencies

Probation Advisory Council: Judge Ward deferred his report to Ms. Ashley Garner, Staff Director of the County and Municipal Probation Advisory Council (CMPAC). Ms. Garner reported that Judge Ward was recognized in November for ten years of service as the Municipal Court Representative to the Probation Advisory Council.

Ms. Garner then called attention to the written report behind Tab 4. The deadline to register as a private, municipal, or county probation provider for 2007 was December 31, 2006. Registration packets will be reviewed, and the governmental entity will receive instruction and assistance until its registration is brought up to the specified standards. The list of providers in compliance will be posted to the Probation Advisory Council website by March 1st. To date three private probation providers have been dropped from the registered list due to a lack of

continued on page 7

Minutes cont.

active contracts, leaving a total of 40 companies for 2007. Judges are asked to encourage the 30-35 probation departments who failed to meet the deadline to submit their registration packets prior to February 15th.

Ms. Garner related several topics of discussion have arisen as a result of the new requirements. The requirement for each probation department to have a probation service agreement signed by the governmental entity and the judge is a frequent source of inquiry. Another topic for discussion is that the agreements must include provisions for termination of the contract, and for reasonable caseload requirements. Private probation averages 250-350 active offenders per probation officer. She stated city or county probation ratios have been as high as 1 officer to 800 active probationers. The Probation Advisory Council is focusing its attention to ensuring that the 11 specific requirements listed in the Rules are included in the probation provider agreements.

Ms. Garner observed that the Probation Advisory Council staff has conducted five classes on the new requirements and at least two different mailings have been forwarded to mayors, county commissioners, and to the listservs for judges. In the next two months, staff will begin direct contact with judges, probation departments, and the governing authorities that are not in compliance. Failure to accept an invitation to meet or request assistance in filing the registration packet will result in a 'cease and desist' letter. Further actions will be addressed by an administrative law judge, in accor-

dance with the Administrative Procedures Act. Judge Jackson expressed concern that all municipal judges, not just the chief judge, needed to be informed that the probation company or entity is not meeting the requirements.

Ms. Garner assured the judges that every effort will be made to avoid the latter disciplinary phase of the implementation plan.

There was discussion regarding who administers probation, the city or the chief of police. Ms. Garner stated the Probation Advisory Council will not address the conflict of interest issue until the end of this year. Judge Whatley remarked that the ruling of one case on appeal sided with the city having the control. Other committee members added there were other issues involved in the case. Judge Ward interjected that a judge's relationship with the city government is an important factor in the matter.

There being no other questions, Judge Cielinski thanked Judge Ward and Ms. Garner for their report.

Georgia Courts Automation Commission: Judge Strickland reported that as part of the Technology Strategic Plan, the IT Committee will survey judges and clerks to determine the current state of technology in municipal courts. He asked judges to review the proposed survey in the agenda, and to submit comments as soon as possible. Once approved by the IT Committee, the survey instrument will be immediately distributed. Survey results will be tallied and a preliminary report presented to the

Council as soon as possible.

Judge Cielinski acknowledged Mr. Jim Poulakos' request to address the members. Mr. Poulakos reiterated that this IT survey is in response to the municipal court Strategic Plan for Information Technology created in 2005. He encouraged those who have not reviewed the Strategic Plan to view it on the GCAC web site (www.gcacommission.org). He reminded the members that the plan is a living, breathing document which can be updated as necessary. This planning is being conducted at all levels of courts and will be used to coordinate new initiatives.

Georgia Municipal Association (GMA) and Georgia Superior Court Clerks Cooperative Authority (GSC-CCA): Judge Bobbitt reported he attended a fee and fine surcharge hearing called by Senator Wilder in December. GSCCCA presented information about the status of fee and fine collections and about the development of the online calculators. Testimony was given that the current system of calculating and submitting the fees and fines is familiar to the clerks and is working well. Accordingly, GSCCCA is not in favor of a single-fee add-on in lieu of the current system.

Judge Jackson also attended the hearing and testified about accounting difficulties his court has experienced with the current system.

Next, Judge Bobbitt reported he attended the GMA 2007 Annual Mayors Day meeting in late January. He reported the fees and fines surcharges were discussed again at the

continued on page 8

Minutes cont.

Public Safety Committee meeting. GMA supports the idea of a single fine add-on with the fines going to the city government first, with the fine add-ons then remitted to the State. He stated the Beneficiary Funds are opposed to any attempt to institute a single fee add-on that would set a cap on receipts. It was felt the legislators would not push the issue.

Judge Bobbitt also reported discussion was held about municipal courts not submitting collected fees according to the schedule. He expressed the need to bring this issue to the attention of all judges and further added that clerks have a responsibility to adhere to the established deadline for remittance of funds and reports, regardless of the frequency in which court is held.

Judge Bobbitt reported GMA is also monitoring legislation concerning red light cameras, efforts to enforce 'stop arm' compliance on school buses, fire safety training, annexation issues, and attempts to fingerprint immigrants driving on suspended licenses.

Finally, he reported the GMA Public Safety Committee is forming a study committee for possible legislation in 2008 to define terms of court for municipal judges. Concern exist about city charters that provide for appointment of judges to serve at the pleasure of the mayor or city council. There was initial discussion about possibly hiring a lobbyist to work on this issue next year, however the topic was tabled until the next meeting.

Georgia Public Defender Standards Council (GPDSC): Judge Barrett noted SB 503 (2006 Legislative Session) struck down the authority of GPDSC to set up the standards for determining indigency and stated that the Federal Poverty Guidelines must be used. The law now states every municipal court must have an indigent defense program or the court has no jurisdiction to sentence. He distributed a chart illustrating the revised "Poverty Guidelines and Standards for Determining Indigence." The 125% column of the chart is to be used for any misdemeanor violator to determine when they are entitled to Counsel. The 150% column is to be used for felony violators. The expressed sentiment among committee members is that judges should err on the side of appointing counsel for defendants who were close to the poverty level.

Old Business

Judge Cielinski noted that without a quorum, the District Three Representative replacement could not be voted upon.

New Business

Judicial Council: Judge Cielinski reported that he has met with the Chief Justice and with Justice Hines. Both are very supportive of the idea of the municipal judges having a position on the Judicial Council. He asked that everyone contact at least one Superior and State Court Judge that is currently a member of the Judicial Council to solicit their support.

Judge Cielinski reported the Chief Justice's Commission on Professionalism has developed a

Judicial District Professionalism Program (JDPP). It is a private, informal, and voluntary program for mentoring and for resolving disputes between judges and attorneys. The goal of this program is resolve issues of professional conduct before formal complaints are filed with the Judicial Qualifications Commission. Judges are encouraged to order copies of the informational brochure from the State Bar.

The Chair also called attention to the article behind Tab 6, "Safeguarding a Nation." The article discusses the importance of Emergency Preparedness Plans for state archivists and first responders to save records essential to the preservation of history and identity.

Finally, Judge Cielinski informed members that the ICJE Board of Trustees has decided that pro tem judges should not serve on any Training Council in the future.

Ms. Murphy announced that the next issue of the newsletter will be in April. Please submit articles as soon as possible.

The next meeting of the Council of Municipal Court Judges will be held April 20th, 2007, at the AOC office in Macon. There being no further business to discuss, Judge Ward moved for adjournment. The motion was seconded by Judge Ashman, and the meeting was adjourned.

Respectfully submitted for
Judge Gerhardt, Secretary
by Leslie Johnson
Staff, Court Services

Financial Report

COUNCIL OF MUNICIPAL COURT JUDGES -Q3 FY 2007

1/1/2007 through 3/31/2007

Date	Account	Num	Description	Memo	Category	Amount
BALANCE 12/31/2006					57,411.89	
1/20/2007	DEPOSITS	DEP	DEPOSIT	DUES	DUES	60.00
1/28/2007	DEPOSITS	2006	STATLEY EV	LEGISLATIV	Dining	-765.00
2/5/2007	DEPOSITS	2005	CGRAVITT	REIM-MITC	FUNERAL FL	-69.65
1/1/2007 - 3/31/2007						-174.55
BALANCE 3/31/2007						56,637.14
TOTAL INFLOWS						60.00
TOTAL OUTFLOWS						-834.55
NET TOTAL						-774.55

Cash Inflows: Dues \$60.00

Cash Outflows: \$765.00 paid to Stately Events for Legislative Breakfast and \$69.55 paid for flowers for funeral of Kathy Mitchem's Mother.

Ending Bank Balance at 3/31/2007: \$56,637.14 (reconciled).

Signed: Charles A. Gravitt, Sr., Treasurer

Municipal Judges Benchbook

By Judge Glen Ashman

I know you all use your Benchbook, but what have you noticed about it that would make it better? New topics? More forms? A broader range of caselaw perhaps? Have you noticed any needed corrections?

A really effective Benchbook depends upon the collective participation of the membership. Please forward any items you routinely use or refer to that are not already in the Benchbook such as different forms -

especially ones in foreign languages (include both the English and the foreign language versions please). How about caselaw you have found helpful, new or old, Federal or State? Short summaries (a sentence or so) of recent state or federal cases are especially useful (please include the case citation). It is helpful but not required to send forms in Word Perfect or Word 2003 format.

Especially useful will be any

comments and materials relating to bills passed in the 2007 General Assembly that may affect our courts.

Please submit your ideas, comments, submissions or corrections to: Judge Glen Ashman, 2791 Main Street, East Point, GA 30344; or 404-768-3509; or geaatl@msn.com. While the project is ongoing, material submitted after July 1, 2007 may not make it into the next update.

Traffic Update for Municipal Judges

June 27 - 29 • Hyatt Regency • Savannah

Wednesday from 1:00-5:00 is set aside for Council Committee Meetings and the yearly Golf Tournament. The educational sessions will be Thursday, June 28 from 8:00 am to 5:30 pm and Friday, June 29 from 8:00 am to 12:30 pm. To complete 12 hours of mandatory training over the two days, you must attend all the sessions, including the remarks by

Chief Justice Leah Sears.

The deadline to get the group room rate of \$149 single or double at the Hyatt in Savannah is May 25. Call 1-800-233-1234 and say you are with the ICJE Traffic Update Course. To exempt the local hotel tax (not the State tax) for your lodging room, print out the Tax Exempt Form located at www.uga.edu/icje under forms, tax exempt form. Give

this form to the front desk personnel upon checking into your hotel room.

State Bar MCLE Credit: 10 hours are available for this seminar, including 3 trial practice hours, 1 professionalism hour and 1 ethics hour for a total of \$65. You must send your payment check directly to the State Bar after the seminar.

THURSDAY, JUNE 28


7.5 hours credit

FRIDAY, JUNE 29

4.5 hours credit

- 8-9 Current Ethics Issues for Judges, Dir. Rich Reaves, et. al.
- 9-11 Update on New Traffic Laws, Including Suspension, Revocation & Reinstatement Policies, Mr. Brandon Poarch, Department of Driver's Services
- 11-12 Federal Railroad Administration's Report- Importance, Necessity of Enforcing Citations: Railroad Crossings, Ms. Leslie Spurlock
- 12-2 Group Lunch (12-1) & Business Meeting (1-2)
- 2-5:30 Standardized Field Sobriety Testing, Judge Vicki Carmichael, Indiana

- 8-9:45 Criminal Case Law Update, Hon. Ben Studdard
- 9:45-11:30 Evidence: Foundation for Using of Data on Speed Measurement and Operator Impairment, TBA
- 11:30 - 12:30 Comments on State Judicial Administration, Chief Justice Leah Sears
(Justice Sears' remarks count as the last hour of your 12 MCJE hours)



T.I.P.S.
Traffic Information Processing System

TIPS is a NO COST software program that allows courts to transmit traffic citations to the Department of Driver Services electronically. TIPS was developed by the Governor's Office of Highway Safety and the Administrative Office of the Courts.

Contact us for more information:
Kelly McQueen
System Placement and Program Planner
404.463.5420 • mcqueenk@gaoe.in
www.georgiacourts.org/aoc/tips

Council Elections, June 2007

Pursuant to Article Five, Section 2, of the Bylaws of the Council, the following named persons have been certified by the Nominating Committee as candidates for election to the offices indicated.

OFFICERS:

President Elect:	John A. Roberts
Vice President:	Judge Tammy Stokes
Secretary	Judge Kathryn Gerhardt
Treasurer:	Judge Charles A. Gravitt, Sr.

EXECUTIVE COMMITTEE:

Judicial District One

Judge J. Hamrick Gnann, Jr.
Judge Willie T. Yancey, II

Judicial District Six

Judge J. Clayton Davis
Judge Gregory A. Futch

Judicial District Two

Judge Willie C. Weaver, Sr.
Judge Henry Williams

Judicial District Seven

Judge Diane M. Busch
Judge Robert L. Whatley

Judicial District Three

Judge Michael P. Cielinski
Judge S.E. Moody, III

Judicial District Eight

Judge Thomas C. Bobbitt, III
Judge Malcolm R. Bryant, Jr.

Judicial District Four

Judge Angela Butts
Judge Warren W. Hoffman

Judicial District Nine

Judge William F. Brogdon
Judge Kenneth E. Wickham

Judicial District Five

Judge Calvin S. Graves
Judge Rashida Oliver

Judicial District Ten

Judge Chip Hardin
Judge C. David Strickland

TRAINING COUNCIL (two vacancies)

Judge John Clayton Davis
Judge David Mecklin
Judge Nelly Withers

The Municipal Court member on the ICJE Board of Trustees is appointed by the President of the Council of Municipal Court Judges. The three-year term begins July 1, 2007.

Brown v. State, 134 Ga. App. 771, (1975)

Submitted by Judge Robert L. Whatley

It is said that Judge Dunbar Harrison of the Superior Court of Chatham County jovially remarked at a social event to Judge Randall Evans of the Court of Appeals that "If you ever reverse one of my decisions, let it be written poetry." Justice Evans complied with the following opinion:

The D.A. was ready
His case was red-hot
Defendant was present
His witness was not

He prayed one day's delay
From His honor the judge.
But his plea was not granted
The Court would not budge.

So the jury was empanelled
All twelve good and true
But without his main witness
What could the twelve do?

The jury went out
To consider the case
And when they returned
The defendant to face.

'What verdict, Mr. Foreman?'
The learned judge inquired.
'Guilty your honor.'
On Brown's face - no smile.

'Stand up' said the judge,
Then quickly announced
'Seven years at hard labor'
Thus his sentence pronounced

'This trial was not fair'
The defendant then sobbed.
'With my main witness absent
I've simply been robbed.'

'I want a new trial -
State has not fairly won.'
'New trial denied.'
Said Judge Dunbar Harrison.

'If you still say I'm wrong,'
The able judge did then say
'Why not appeal to Atlanta?'
Let those Appeal Judges earn
part of their pay.'

'I will appeal, sir' -
Which he proceeded to do-
'They can't treat me worse
Than I've been treated by you!'

So the case has reached us-
And now we must decide
Was the guilty verdict legal-
Or should we set it aside?

Justice and fairness
Must prevail at all times;
This is ably discussed
In a case without rhyme.

The law of this State
Does guard every right
Of those charged with crime
Fairness always in sight.

To continue civil cases
The judge holds all aces.
But it's a different ball game
In criminal cases

Was one day's delay
Too much to expect?
Could the State refuse it
With all due respect?

Did Justice applaud
Or shed bitter tears
When this news from Savannah
First fell on her ears?

We've considered this case
Through the night--through
the day
As Judge Harrison said
'We must earn our poor pay.'

This case was once tried-
But should now be rehearsed
And tried one more time
THIS CASE IS REVERSED!"

Resource for this article came from "Wit and Wisdom of Georgia Law" by John Respass, Jr. The decision is a published opinion by the Georgia Court of Appeals.

Case Law Update

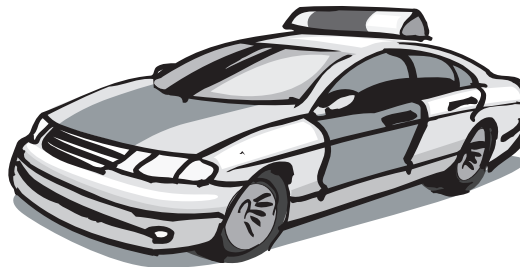
By David Clark, Clark & Towne

In the recent case of *Henry v State* (Court of Appeals #A06A2389 March 20, 2007), the Court of Appeals held: Where the defendant was charged with first degree vehicular homicide based on felony hit-and-run, OCGA 40-6-393(a) requires the state to prove a causal connection between the hit-and-run violation and the victim's death. *Klaub v State*, 255 Ga.App 40 (2002), and *Steele v. State*, 275 Ga.App. 651 (2005) were overruled in part.

First degree vehicular homicide is committed whenever a person causes the death of another through the violation of one of five code sections (DUI, reckless driving, hit-and-run, passing a school bus, or fleeing a police officer). It is a serious felony for which the punishment is 3-15 years. If a person who has been declared an habitual violator causes the death of another while driving, he or she is also guilty of

first degree vehicular homicide without any predicate offense required and faces a 5-20 year sentence. OCGA 40-6-393.

Second degree vehicular homicide is committed whenever a person accidentally causes the death of another by violating a less serious



traffic law, and is a misdemeanor punishable by up to 12 months.

In June, 2003, Michael Henry was driving on Cruse Road just after midnight when he struck two teenaged boys who were walking alongside the road. He had a passenger with him, who heard the sound of the impact and told him to stop

the truck. Instead, he chose to speed home without stopping. One of the teenagers died from his head hitting the truck. The other boy suffered a broken leg but lived. Henry later tried to hide the truck and reported it stolen.

Henry was charged with first degree vehicular homicide (by hit-and-run) as to the boy he killed and serious injury by vehicle (by hit and run) as to the surviving child. The hit-and-run statute, OCGA 40-6-270(a), requires any driver involved in an accident resulting in injury or death to stop and remain at the scene long enough to leave insurance information, produce a driver's license, and render aid. He was convicted on all counts after a bench trial and sentenced to a total of 20 years.

The only evidence at trial as to the cause of death was the passenger's opinion that the victim was instantly killed when Henry struck him. According to the trial evidence, therefore, the boy would have died regardless of whether Henry stopped to render aid. Henry's violation of the hit-and-run law was therefore not proven to have been a contributing factor in the death. Reversing its stance from five years ago in *Klaub*, supra, the Court said, "causing a death 'through' failing to stop and render assistance is plainly not the same as causing a death and then failing to stop and render assistance" and reversed the conviction. The state must prove proximate cause in any vehicular homicide case; that is, it must be proven that the death would not have occurred but for the defendant's violation of the predicate offense.

DDS Notice

By Brandon A. Poarch, DDS - 678.413.8444

The Georgia Department of Driver Services is pleased to announce the release of Version 2 of the Georgia Electronic Conviction Processing System (GECPS). GECPS 2 allows courts to submit all convictions, court-ordered suspensions, and zero-point orders electronically to DDS. Failure to Appear notices for Georgia and non-Georgia drivers can be submitted and withdrawn electronically (even after the suspension takes effect). For more information, please visit the DDS

GECPS website (<https://online.dds.ga.gov/gecps>) and download the Implementation Guide. Please contact your vendor or I.T. department for details on upgrading to version 2 as well as the new procedures for data entry and transmitting.

Also: The 2007 Traffic Court Reference Manual is ready. Please visit the DDS website and click on the "Business Partners" link (www.dds.ga.gov/business) to download a copy for your office.

Legislative Update

By Judge Charles Barrett, Municipal Courts of Duluth and Lilburn

The Georgia General Assembly concluded its regular session on Friday, April 20th, 2007. Legislation can be viewed at the Administrative Office of the Courts website, www.georgia-courts.org. Click on "Legislative Tracking."

Several measures are particularly noteworthy. Senate Bill 23 amends Article 1 of Chapter 10 of Title 17 of the O.C.G.A. This bill provides that in making determinations with respect to probation and suspension of sentences, the court may inquire into and consider the legality of a prisoner's presence in the United States. If the court determines that the person to be sentenced is not lawfully present in the United States, the court shall be authorized to make inquiry into whether the person to be sentenced would be legally subject to deportation from the United States while serving a probated sentence. If the court determines that the person to be sentenced would be legally subject to deportation from the United States while serving a probated sentence, the court may (1) consider the interest of the state in securing certain and complete execution of its

judicial sentences in criminal and quasi-criminal cases; (2) be authorized to consider the likelihood that deportation may intervene to frustrate that state interest if probation is granted; and (3) where appropriate, be authorized to decline to probate a sentence in furtherance of the state interest in certain and complete execution of sentences. The code section shall apply with respect to a judicial determination as to whether to suspend all or part of a sentence of confinement in the same manner as the code section applies to determinations with respect to probation. The bill also amends Article 2 of Chapter 9 of Title 42 of the O.C.G.A., so as to provide that the State

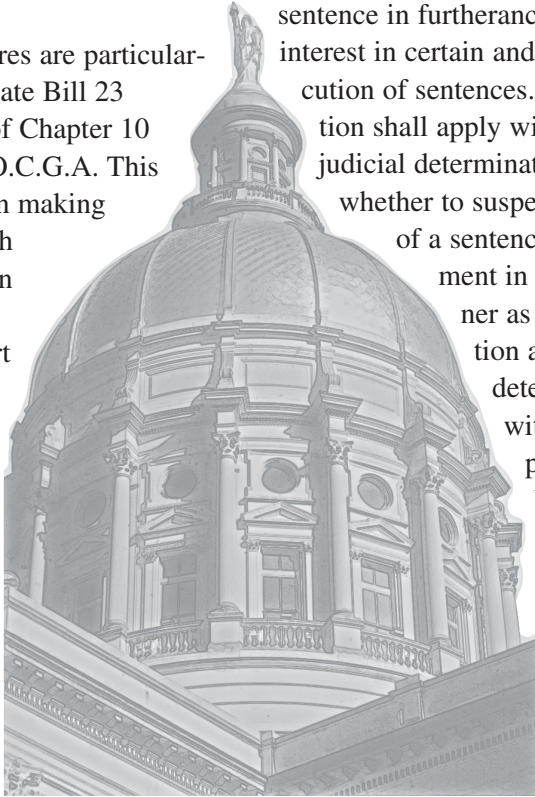
Board of Pardons and Paroles may do the same when making parole decisions.

Senate Bill 15 amends Chapter 5 of Title 40. Upon the third violation within 5 years of driving while the license is suspended, disqualified, or revoked (as measured from the dates of previous arrests for which convictions were obtained or pleas of nolo contendere were accepted to the date of the current

arrest for which a conviction is obtained or a plea of nolo contendere is accepted) such person shall be guilty of a felony and shall be punished by imprisonment for not less than 1 year nor more than 5 years, and there may be imposed a fine of not less than \$2,500.00 nor more than \$5,000.00.

House Bill 79 amends O.C.G.A. § 40-8-73.1. This measure provides exemptions to window tint laws for certain vehicles. Exempted vehicles include vehicles that display a valid special plate issued to a government official, any vehicle owned or operated by the state or a political subdivision thereof and displays a valid plate, and any vehicle operated in the course of business by a person licensed under Chapter 38 of Title 43, relating to private detective and private security businesses.

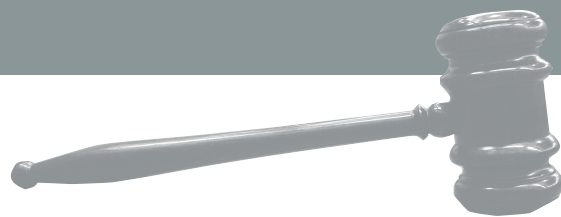
Senate Resolution 246 addresses indigent defense issues, and creates the Joint Study Committee on Indigent Defense. Among other things, Senate Resolution 246 states that significant reforms are needed to ensure the economic viability of indigent defense services in the state and that the General Assembly needs to study various issues to determine the causes for the budgetary shortfalls in the present service delivery model and whether the present model is the best for the state or whether a more efficient system can be devised to more economically protect the rights of indigents charged with crimes.



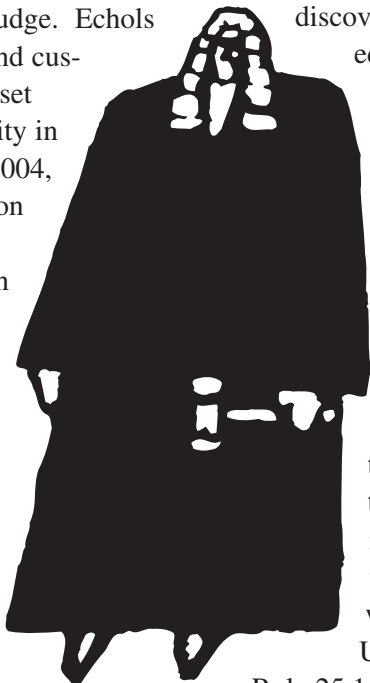
Echols v. Echols

Time requirements for Motions

By Austin Buerlein, 2L, John Marshall Law School, (770) 962-7904



Echols v. Echols, 281 Ga. 546 (Jan. 2007) should serve as a reminder to lawyers of the time-sensitive requirement for filing a motion to recuse a potentially impartial or biased Judge. Echols involved a divorce and custody battle filed and set before Judge McGarity in 2003. On May 14, 2004, the wife filed a motion to recuse Judge McGarity based upon allegations that the judge's long-time business and personal relationship with Mr. Echols's family prohibited this judge from being impartial in the case. The wife alleged in her motion that at the beginning of the litigation in 2003, the husband told her that he and his family had known Judge McGarity forever, and that Judge McGarity had already decided to award custody of the child to the husband. Wife further alleged in her motion that in January 2004 the Judge had received extra judicial information from some other source with regards to re-financing the marital residence. This evidence caused her to further investigate and confirm the Judge's personal and



business relationship with Mr. Echols and his family. Finally, the wife alleged that, in an order filed May 6, 2004, Judge McGarity specially set the action for trial when discovery had not been completed; that this order demonstrated that Judge McGarity was biased against Ms. Echols; and that this order caused her to file her recusal motion.

Regardless of such persuasive evidence, the Supreme Court of Georgia held that the trial court correctly denied the wife's motion for recusal because it was not timely filed in accordance with the law. Under Uniform Superior Court Rule 25.1, a motion to recuse must be filed no "later than five (5) days after the affiant first learned of the alleged grounds for disqualification ... unless good cause be shown for failure to meet such time requirements." Here, Ms. Echols's recusal motion was based on Judge McGarity's bias against her due to his close personal and business relationship with Mr. Echols's family. One of the allegations of bias allegedly occurred at the beginning of the litigation when Mr. Echols

told her that his family had known Judge McGarity "forever" and that he would rule in his favor on custody. Moreover, the wife stated that she began to further investigate the alleged close business and personal relationship between Judge McGarity and Mr. Echols's family in January 2004. Finally, Ms. Echols stated that the May 7, 2004, order specially setting the case for trial confirmed Judge McGarity's bias and caused her to file the recusal motion. The Court ruled that the wife was alerted to this judge's alleged bias prior to five days before finally filing her motion for recusal on May 14, 2007. The Court explained, "Arguably, Ms. Echols should have filed her recusal motion within five days of her conversation with Mr. Echols in 2003." *Id.* Although wife responded that it was not until May 7, 2004 that she was totally convinced of such bias, the Court explained that at least a large part of her investigation and documentation occurred way before that date, and therefore her claim was stale.

In response to this case, a client or lawyer should file a motion to recuse as soon as they are alerted of any facts that might indicate impartiality of a judge. If not, the Court may hold, "you snooze, you lose."

Three Cheers for Lawyers

By Randy E. Barnett, Carmack Waterhouse Professor of Legal Theory.

Wall Street Journal, April 17, 2007;
Page A19

Years ago, I appeared on "The Ricki Lake Show" in an episode about persons who had been freed on appeal after being wrongfully convicted of crimes. As a former criminal prosecutor with the Cook County State's Attorney's Office in Chicago, I was there to represent the "prosecution viewpoint" (whatever that might be), along with the leader of New York's Guardian Angels representing the "victims' viewpoint."

The other guests consisted of innocent persons whose convictions had been reversed, their appellate lawyers, their parents and a reporter who had helped vindicate a father wrongfully convicted of murdering his young daughter. As I approached the set, I wondered what I could possibly say that would ward off the hoots of the audience, especially given that I was just as appalled by wrongful convictions and prosecutorial abuses.

The point I decided to make was simple: For better or worse, we have an adversary legal system that relies for its proper operation on having competent lawyers on both sides. In every case I knew about where an innocent person had been convicted, there had been an incompetent defense lawyer at the pretrial and trial stages.

The reaction of the others on the stage with me was stunning. The former defendants all began nodding their heads while their lawyers, who represented them on appeal but not at trial, sat sullenly beside them. Afterwards, some parents even

came up to shake my hand.

The crucial importance of defense lawyers was illustrated in reverse by the Duke rape prosecution, mercifully ended last week by North Carolina Attorney General Roy Cooper's highly unusual affirmation of the defendants' complete innocence. Others are rightly focusing on the "perfect storm," generated by a local prosecutor up for election peddling to his constituents a racially-charged narrative that so neatly fit the ideological template of those who dominate academia and the media. But perhaps we should stop for a moment to consider what saved these young men: defense attorneys, blogs and competing governments.

Our criminal justice system does not rely solely on the fairness of the police and prosecutors to get things right. In every criminal case, there is a professional whose only obligation is to scrutinize what the police and prosecutor have done. This "professional" is a lawyer. The next time you hear a lawyer joke, maybe you'll think of the lawyers who represented these three boys and it won't seem so funny. You probably can't picture their faces and don't know their names. (They include Joe Cheshire, Jim Cooney, Michael Cornacchia, Bill Cotter, Wade Smith and the late Kirk Osborn.) That's because they put their zealous representation of their clients ahead of their own egos and fame. Without their lawyering skills, we would not today be speaking so confidently of their clients' innocence.

These lawyers held the prosecutor's feet to the fire. Their skillful

questioning at pre-trial hearings revealed the prosecutor's misconduct that eventually forced him to give up control of the case and now threatens his law license. They uncovered compelling exculpatory evidence and made it available to the press; they let their clients and their families air their story in the national media.

There is no rule book for what prosecutors call "heater" cases like this one. Navigating the law, politics and publicity in such case is an art not a science. These fine lawyers displayed all the skills and tenacity that made me want to be a criminal trial lawyer after watching the television series, "The Defenders," when I was 10 years old.

Do you suppose that lawyers like these gained their skills only representing the innocent? Criminal lawyers are constantly asked how they can live with themselves defending those guilty of serious crimes. The full and complete answer ought to be that, because we can never be sure who is guilty and who is innocent until the evidence is scrutinized, the only way to protect the innocent is by effectively defending everyone.

As a prosecutor working "felony review," when I was in a Chicago police station at 3 a.m. deciding whether to approve charges, I had to evaluate the evidence as if I were a defense attorney. Where is the murder weapon? Where are the proceeds of the robbery? How credible are the witnesses? How was the identification of the accused conducted?

In this way, the mere prospect

continued on page 17

Three Cheers cont.

of a competent defense attorney scrutinizing the evidence in the future provides a powerful deterrent to pursuing weak cases even before anyone is charged. Thanks to defense lawyers defending the innocent and guilty alike, prosecutors generally win their cases because they avoid weak cases they may lose. (After the charging stage, a prosecutor's ability to avoid losing at trial by plea bargaining weak cases is a serious, but separate and complex issue.)

Paradoxically, the system's overall accuracy makes defending the truly innocent all the harder. While knowing that mistakes do happen, the accuracy of the system leads everyone, including defense lawyers, to assume that anyone who is charged is probably guilty. After all, they usually are.

Notwithstanding the legal "presumption of innocence," in a system that generally gets it right, there is a pragmatic presumption of guilt.

Consequently, effectively defending the innocent usually requires the ability to prove your client's innocence. And that's not easy. Further, because representing the guilty consists mainly of negotiating pleas or knocking holes in the prosecutor's case, defense lawyers do not always develop the skills needed to effectively defend the truly innocent or, as important, know when to deploy them. Defense lawyers become as skeptical about their clients' claims of innocence as everyone else, if not more so. All this contributes to inadequate

defense lawyering, which thankfully did not occur here.

Good lawyering alone, however, was not enough to free the Duke players. While the "mainstream" press largely swallowed District Attorney Mike Nifong's narrative of racial oppression, the blogs -- especially history professor Robert "K.C." Johnson's blog *Durham-in-Wonderland*

(durhamwonderland.blogspot.com) - provided the means by which the public could learn about the fruits of the defense's efforts. (Mr. Johnson's own difficulty in 2002 obtaining tenure at Brooklyn College over ideologically-motivated opposition was chronicled on this page by Dorothy Rabinowitz, who also, true-to-form, came to the defense of the Duke Lacrosse players.)

Finally, without the competing governing powers of the North Carolina state bar, the Attorney General's office, and potentially the U.S. Justice Department, there would simply have been no one in authority to rein in this prosecutor. It is worth noting, to those who champion political accountability as the highest form of legitimacy, that District Attorney Nifong was elected by, and presumably "accountable" to, his constituents. Nevertheless, his power needed to be checked by competing government agencies and a free press.

Rather than praising the defense lawyers, some of the same folks who whooped in support of Mr. Nifong's efforts are now bemoaning that it was the supposed wealth of

these students' parents that enabled them to mount so effective a defense. Never mind that draining all their savings and putting them in debt is an additional injustice resulting from this wrongful prosecution. Of course, as my grandfather used to say, "rich or poor, it's nice to have money," but this case shows that wealth is no defense to public ruin. Sometimes it even invites it.

Let us not be distracted all over again. The difficult problem of innocent defendants typically arises in run-of-the mill cases where prosecutors acting in good faith have no reason to doubt their guilt. It results in part from the pragmatic presumption of guilt, which leads to inadequate defense lawyering, an indifferent press and an oblivious public. There are no easy solutions to this. But refraining from ridiculing lawyers in general, and criminal defense lawyers in particular, would be a nice start, and one that lies within the power of everyone reading these words.

Mr. Barnett is a professor at the Georgetown University Law Center and author of "Restoring the Lost Constitution: The Presumption of Liberty" (Princeton, 2004). URL for this article: <http://online.wsj.com/article/SB117678072030072315.html>

Red Light Photo Mania

Is intersection surveillance going too far?

Interviewed by Joshua H. Silavent

Bob Barr represented the 7th District of Georgia in the U.S. House of Representatives from 1995 to 2003. He is President and CEO of Liberty Strategies, LLC, a public policy consulting firm headquartered in Atlanta, Georgia.

Robert Dallas - a child safety advocate with a background in finance, law, and public service with the State of Georgia and DeKalb County - was appointed as Director of the Governor's Office of Highway Safety (GOHS) by Governor Sonny Perdue on July 1, 2003.

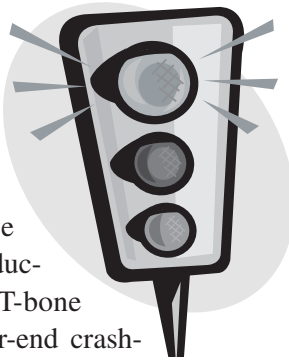
As drivers across metro Atlanta begin to take notice of red-light cameras, the debate over using photo enforcement to ticket those who run red lights is heating up within the state Legislature. One of the suggested proposals (House Bill 77) seeks to redirect some of the revenue produced by red-light cameras from municipalities to a trauma care system. In this month's face-off, Bob Barr and Robert Dallas examine the validity and effectiveness of red-light cameras. After reviewing their statements, let us know what you think by logging on to our Web site at atlantalifemag.com and clicking "Blog."

Several studies indicate that intersections with red-light cameras have experienced an increase in rear-end accidents while side collisions have decreased, for no net gain in accident prevention. Could you comment?

BB: A number of the studies that I've seen regarding red-light cameras indicate that the imposition of red-light cameras at intersections actually increases rear-end accidents. Some of the studies indicate that there is a decrease in side accidents, but by and large, the best you seem

to be able to gain from a safety standpoint with these red-light cameras is awash. The evidence is clear that there is really very little, if any, net safety gain when you are simply trading off less of one kind of accident and more of another kind.

RD: This is one of the greatest misconceptions portrayed by red-light camera opponents: that no-injury crashes are as bad as injury and death crashes. Peer-reviewed studies conducted by experts in the field conclude that red-light cameras improve safety by reducing severe T-bone crashes. Rear-end crashes caused by drivers following too closely sometimes go up initially, but then go down as driver behavior is modified and more drivers obey the law. This is the purpose of having the cameras in the first place. According to the Insurance Institute for Highway Safety, the addition of red-light camera enforcement reduces violations by 96 percent beyond levels achieved by longer yellow-light timing alone.



It has been suggested that red-light cameras are focused more on providing a revenue source for municipalities than they are on ensuring public safety. Do you think this is an accurate assessment? Why or why not?

BB: I don't think city, county or other municipal or state officials who advocate for red-light cameras can truly argue with a straight face that money is not certainly a motivating factor. There are many places in Washington D.C., for example, that if one looks at the placement of the cameras it is very clear that they are placed at those intersections and in those areas in which there is the highest traffic, and that is simply to generate more revenue. Whenever you have a government entity, they are always trying to maximize income, maximize taxes, maximize fines, and red-light cameras are no different. Yet it's amazing to me the number of people who seem to be taken in; who all of a sudden when it comes to red-light cameras [believe] local governments become entirely altruistic and have no interest in the money. They tell us that they are simply doing it for the greater public good of safety. I think that's nonsense.

continued on page 19

Red Light Photo Mania cont.

RD: Those who would make that argument sometimes ignore the actual costs of the red-light systems and crashes. The fact is most systems in Georgia do not generate excess revenue above their costs. Over time, the revenue tends to go down as drivers obey the law as intended. To the extent that there is excess revenue, it generally is used to cover the public-safety costs born by municipalities and counties associated with responding to 911 crash calls. These costs include officers responding to the crash, securing the crash scene and conducting a crash investigation; emergency medical technicians who are transporting injured persons to the emergency room; emergency room doctors, nurses and facilities to care for the injured; and court's administration of the criminal and civil legal issues arising out of the crash. Since they are held responsible for crash costs of disobedient drivers, local jurisdictions should be allowed the revenue to pay for the tools to prevent the crashes in the first instance.

Do you think proposals to direct approximately 75 percent of municipal revenues produced by red-light cameras to Georgia's trauma care system might validate their existence?

BB: Saying that we're going to take X percentage of the revenues from red-light cameras and use them for something else that the state funds doesn't address any of the issues over whether we ought to have red-light cameras. They [red-light cameras] ought to be imposed if people feel that it is constitutional and a good

public policy. Trying to use smoke and mirrors to disguise what the government is doing here-and that is controlling citizens, invading their privacy and generating revenues regardless of whether they use X percentage for this purpose and Y percentage for another purpose-is very disingenuous. Using the money from red-light cameras to fund trauma systems doesn't validate anything. It is simply directing some of the revenue in another direction from where it would have gone previously.

RD: Red-light camera systems are validated because they are proven to save lives and prevent severe injuries. In actuality, red-light camera systems are similar and no more sinister than the system used on the Georgia 400 tollbooth where the fines are retained by the state. The question comes down to whether the revenue should be retained by the jurisdiction responsible for the public-safety costs caused by the crashes or by another entity.

No matter how long after someone enters an intersection, drivers will be ticketed if the light turns red. For instance, drivers making a left turn may need to run a red light in order to exit the intersection, and many believe this should not constitute a traffic violation. Because tickets are written regardless of the circumstance, and because contesting a ticket is costly and time-consuming, do you think the right to due process is being violated?

BB: Clearly the right to due process is being violated, as well as fundamental fairness. If you have an officer on the scene-while it doesn't always work-many times if the citi-

zen explains to the officer why they happened to be in the intersection and why they had to exit the intersection after the light had turned red, common sense will dictate to both the officer and the individual that this is not an appropriate circumstance in which to give a ticket. Even if one then has to go into court, at least one can make that argument, because a police officer was there and can help verify the facts of the case. Where you have a red-light camera taking a picture, individuals and the courts generally are very predisposed to rely on that technical evidence. And yes, while a person can come into court and contest it, it's very difficult, it's very time-consuming, and the chances are they will not win because a court would look at the picture and the picture would show a license plate going through an intersection after the light had turned red. It doesn't necessarily give you the whole picture.

I'm sure if we thought about it, there are other aspects of this [debate] in terms of one being innocent until proven guilty. With these traffic cameras it is just the opposite. You are deemed guilty unless you go into court and contest that finding of guilt. The simple fact of a picture being presented in the court now raises the presumption of guilt. That is a 180-degree change from the way our system heretofore has operated.

One's right to privacy, I don't believe, ought to be considered surrendered simply because one is driving in one's own car. It surprises me the number of so-called conservatives who think nothing of the government taking pictures of people in

continued on page 20

Red Light Photo Mania cont.

their own private vehicles at a particular time and place simply to either generate revenue or quote “protect public safety or increase public safety.” What we also find-at least in some instances and some jurisdictions around the country-is that pictures are being taken of the cars themselves and not just the license plate. In some of these instances, pictures are taken of the people inside the car, which, again, I think is a very significant invasion of one's privacy.

RD: Unfortunately, this is another mistaken belief that has entered into the red-light camera debate. A citation is not written every time a vehicle is in the intersection when the light turns red. A citation is considered only if the vehicle enters the intersection after the light turns red and no citation is issued until the photos are first reviewed by a law-enforcement official. From a constitutional perspective, two Georgia Attorney General opinions have concluded the red-light camera system is constitutional on all fronts. No due-process rights are violated because an accused offender has the right to challenge and appeal the allegation. The violator is forewarned of camera locations by road signs, and specifically, the Georgia Constitution provides governing authorities the ability to control their roadways. The red-light camera system operates under the same constitutional principles that allow both state and federal civil seizure laws to be used by public-safety officials throughout the United States. Privacy is protected because only the rear of the vehicle and tag are photographed.

The suggestion that costs of

challenging a citation is a constitutional excuse to violate the law is a red herring. From a common-sense perspective, this means any person accused of any violation of law with fines attached could argue successfully that the Constitution says the fine does not have to be paid because it is costly and time-consuming to challenge the allegation. Because the citation is written only after law-enforcement review, and since there is a process in place to challenge any allegation, the Bills of Rights in the Constitution are protected.

In 2005, there were 1,744 crash deaths in Georgia. This is over three times the number of murders in our state [during the same year]. Crash deaths are the No. 1 killer of

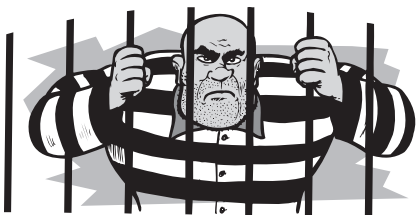
Georgians between the ages of 4 and 34. Red-light cameras save lives and prevent serious injuries. How? Because their presence causes drivers to change their behavior and obey the law. This is the compelling public-safety interest that these systems serve. The legal system under which red-light cameras operate in Georgia has safeguards to ensure they are constitutional. If there is revenue generated by the red-light camera operations, they should be plowed back into improving public safety in the jurisdictions they serve to further reduce deaths and injuries on our state's roadways.

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May 2007 Jail Report

By Brian DiNapoli

In May 2007, the number of inmates held in county jails *increased* by 440 inmates to 37,591. The capacity increased by 180 to 39,927. The following jails have changed their capacities, Oconee County opened a new jail, their new capacity is 136, was 32. Elbert County added an addition to their jail, their new capacity is 96, was 50, and Johnson County opened a new jail, their new capacity is 42, was 12. The number of inmates awaiting trial increased by 89 inmates to 22,327, and the number of sentenced



inmates awaiting transfer to State Institutions *increased* by 116 inmates to 4,065.

The jail report is available at

<http://www.dca.state.ga.us/development/research/programs/jailReports.asp>

Please contact me at 404-679-3147 if you have any questions.

Thank you,
Brian DiNapoli
Office of Research
Department of Community Affairs

Running (From) the Numbers

By Stan Davis, Gwinnett County District Attorneys Office

We now live in a world where everything that we do is dictated by numbers.

From the way that we elect our presidents, to the brand of toilet paper that we use, numbers are the key. We live in a world of endless statistics, one poll after another, and every other measurable notion that can be tallied by a number. We have to look at the numbers before we can make a decision about anything. Even when the evidence is indisputable, we will wait to see what the numbers look like before we can believe it.

This practice has now found its way into our quality of life standards; especially when it comes to whether or not we, as a nation, are safe. Crime statistics have evolved from a simple count of the dead, by the undertaker at the OK Corral to a voluminous series of numbers, formulas, and quotients that are now released by the Department of Justice. After reading these reports, we are supposed to be able to determine our level of public safety.

If only it was that simple. The recent report, which is noted in an Associated Press article by Karen Matthews concerning their latest figures which are already dated, make the question of safety more complicated than ever.

For instance, the report states that murders are up in New York City. For anyone who has ever visited New York, this is not a shocking

headline. Let's face it, when you have over 500 murders a year, five or 10 either way, is not going to make one feel more or less safe than the last year. This year they reported 579, which is a 10% increase from the year before. However, Police Spokesperson Paul Brown stated that the number is not as bad as it might look. He noted that this year's total is only slightly higher than last year's total of 539, which was the lowest number in 40 years. Whew, I feel better already. Obviously anyone should be happy with only 539 people being murdered.

Several other cities reported increases in murders as well. In fact, most cities reported an increase in Part 1 crimes, which are considered the more serious crimes that were reported. These include offenses such as murder, rape, robbery and the like. However, these same cities, although concerned about the increase in the types of crimes that may leave you dead, maimed, or disabled, are quick to point out that their Part 2 crimes, in a few instances, have actually decreased. Part 2 crimes are the less serious ones and include things such as theft, mailbox damage, and a good old fist fight or two. Well, that is at least something to celebrate. We may be killing people left and right, but we can all sleep well at night knowing that our mailboxes are in tact.

But, as convoluted as these reports can be, they do show evidence of the real problem when it

comes to violent crime. Each of the reports mention the increase in gang activity, drug related crimes, easy access to firearms (for those who are not allowed to possess one), the increasing lack of respect for human life by our young people, and the number of illegal immigrants who come to our country looking for more than just a chance to make a good living. Even when the numbers appear to be in conflict, these footnotes are measures and trends that we should all pay attention to. For those who live in high crime areas, these facts are far from news. It is simply a way of life. Criminologist Andrew Karmen also made a good point about the numbers.

When the numbers are down, police agencies are quick to take credit. When the numbers go up, it will be interesting if they accept the responsibility as well.

Maybe we should be less interested in numbers than we are. Maybe the old undertakers had it right all along. The only number that matters is how many graves that have to be dug. Everything else is just a bunch of useless numbers. They may be of importance to a car salesman, but they have little to do with how safe we are.

Municipality of Anchorage Code Enforcement Goes Online

Hansen Web Access Allows Citizens to Electronically File and Track Complaints

Rancho Cordova, CA -- April 12, 2007 -- Hansen Information Technologies (Hansen®), a leading provider of enterprise applications for the public sector market, today announced that the Municipality of Anchorage, Alaska, has gone live with Hansen Code Enforcement. Citizens of the Municipality of Anchorage (Municipality) can now file and track code enforcement complaints instantly via a new, state-of-the-art Hansen system. On Friday, March 9, 2007, the Municipality flipped the switch and brought code enforcement live to its citizens. Through a Web interface, citizens now have a simple to use and easily accessible way to submit and track code enforcement related complaints.

The Web interface is a "public" view into the Municipality's new Hansen Code Enforcement tracking system. The new system enables employees and code enforcement officers to efficiently track, manage, and resolve violations of Anchorage's codes, ordinances, and rules. Prior to the new system, the various agencies responsible for code enforcement used a mixture of incompatible systems and different processes to deal with code violations, which often resulted in uneven enforcement, confusion, and delays. The old disparate systems were "desk-bound," forcing field officers and employees to rewrite and transfer notes to the appropriate systems when they got back to the office.

"I am very pleased with the work the teams produced. We were within our budget and within the

implementation time frame. We all hear about how projects of this nature can drag on and on. It just wasn't the case with Anchorage," reported Keith Ziolkowski, the Chief Technology Officer for the Municipality. Keith added, "I know that Hansen's Code Enforcement system will help provide our citizens the prompt service they expect and assist our employees in doing their jobs better and more efficiently."

Employees and code enforcement officers will now operate from a single, standardized set of business processes when resolving code violations and do it from a single system that is also accessible from the field via a wireless connection. The standardized processes means employees and code enforcement officers can now efficiently deal with complaints that cross agency boundaries and take care of complaints faster. The Municipality can now track each violation against a specific address and maintain a history across different agencies. With the new Web interface, citizens can also easily submit and track code violation complaints and keep informed about the status of a complaint as it moves through the system, 24 hours a day.

"The code enforcement system is an important step in the Mayor's E-government initiative to implement technology that will enable citizens to have better communication and access to their local government," reported Fred Carpenter, Chief Information Officer for the Municipality.

Approved by the Anchorage

Assembly at the end of 2005, the launch of the system purchased from Hansen Information Technologies is the result of more than a year's worth of work involving more than fifty staff members from the Information Technology Department and eight code enforcement agencies. The groups teamed up to complete an initial analysis, application development, training, and weeks of testing. The outcome: a state-of-the-art code enforcement tracking system used in the office, in the field, and online by citizens.

About the Municipality of Anchorage, Alaska

With a population of 261,441, Anchorage is Alaska's largest city with 42 percent of the state's population. Anchorage stretches from Portage Glacier to Eklutna, encompassing 1,955 square miles--about the size of the state of Delaware. Anchorage sits at the base of the Chugach Mountains along the coast of Cook Inlet in South-central Alaska. Mount McKinley, 130 miles (208 km) north of downtown, can be seen on clear days. This 20,320-foot peak is the tallest mountain in North America. Given the contour of the earth, the State of Alaska is actually the northern, western, and eastern-most point in the United States. For more information, please visit www.muni.org.

Strategic Planning Meeting

On May 2, 2007, a select group of judges from Municipal Courts convened at the Macon AOC Office to discuss the further development of the Council of Municipal Court Judges and determine a course of action that will benefit the organization and municipal courts in the future. A number of judges and clerks from diverse jurisdictions were invited to participate as an effort to make the

session representative of urban and rural concerns. Mr. Kevin Tolmich of the AOC, experienced in the development of government and corporate strategic plans, facilitated the meeting.

During the session, judges identified a broad spectrum of trends and issues that the Council will confront over the coming year. Such issues include addressing changing technology, broadening training

needs, developing more effective operations measures, and efforts to increase understanding and respect for the work of Municipal Courts in Georgia. The subcommittee will meet in the coming months to prepare a formal document for distribution to municipal court judges, the Judicial Council, or other interested parties.



Mr. Kevin Tolmich leads discussion of the Strategic Goals and Implementation Strategies. Pictured are Yolanda Lewis, John Roberts, Bob Bray, and Karen Fricke.



Kathryn Gerhardt, LaShawn Murphy, Robert Whatley, Dorothy Allen, Tammy Stokes, Nelly Withers, Michael Cielinski. Also participating, (not pictured), Maurice Hilliard, Bill Clifton, Warren Hoffman, Chris Patterson, and George Nolan.

The Listserv ... Is Ready to Serve You!

If you have not joined, do so now. For those of you who are not aware here are a few reasons to join listserv.

Listsers's purpose is to automatically send information out as well as provide interaction between all Traffic Court and Municipal Judge Subscribers.

1) It's an inexpensive way to interact with fellow Municipal Judges and discuss issues concerning your class of

court,

2) The listserv is a great way to seek out advice on unusual cases,

3) It's a quick way to send urgent notices that may otherwise require sending postcards, making long distance calls (faxes) and playing phone tag (remember the cost buildup).

The Council encourages you to subscribe to this service. It is convenient, informative, and not to mention, it can be used as a great reference. Subscribing takes one call or e-mail.

Once you have subscribed, you will receive a welcome message, providing a pass code and instructions on using the service. If you have any questions about this service, please contact AOC Webmaster Jamal Malloy at (404) 463-3804 or malloyj@gaaoc.us. To subscribe to the Traffic Court Listserv, please contact Leslie Johnson, AOC, at (404) 651-6327 or via email at johnsonl@gaaoc.us

Welcome aboard to all new subscribers!

WE NEED YOUR NUMBERS!!

By Judge Michael P. Cielinski, President, CMCJ

As part of its new Strategic Plan, the Council of Municipal Court Judges has made a commitment to encourage all courts to actively participate in the annual caseload study which begins July 5th. Your court's participation is important. In 2006, only 21% of the Municipal Courts reported, while all other levels of court reported 100% of their annual caseload.

The survey/report is a very simple two-part questionnaire. One part asks for the number of cases filed in your court by category; the second part asks questions about salaried employees of the court. It asks for numbers that your court

should already collect. The caseload numbers are published by the Administrative Office of the Courts



as part of its annual caseload study. These statistics are used by local government and related entities in a

myriad of ways. Courts can compare their size and caseload to each other, which can be a very useful tool when planning your budget needs for the coming year. The salary questions are not published, but are available to judges, court administrators, and other court personnel who demonstrate a need for the information.

It is more important than ever that we present a professional appearance to our peers. Let's show how cohesive a group we can be by participating in this annual survey. Thank you.

(If you have specific questions about the caseload survey, please contact Mr. Michael Polynice, AOC Research Associate, 404-463-5219, or polynicm@gaaoc.us)

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